No. 80-1287

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

INEXCO OIL COMPANY,
A DELAWARE CORPORATION,
Petitioner,

VS.

NEVEL A. WALTERS AND MRS. DELPHIA WALTERS,
Plaintiffs, AND LOFFLAND BROTHERS COMPANY, Third-Party
Defendant,
Respondents.

BRIEF OF RESPONDENTS NEVEL A. WALTERS AND MRS. DELPHIA WALTERS, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTIONS PRESENTED

Respondents, Nevel A. Walters and Mrs. Delphia Walters, respectfully submit the following:

1. There is no factual basis for the contention that Inexco could not be guilty of negligence because there was a contract for drilling the oil well by Loffland Brothers.

2. There exist no conflicts of decisions among the United States Court of Appeals, no conflicts contrary to the decisions of the Supreme Court of the State of Mississippi, no improper interpretation of law, nor does any other reason exist for granting the Petition for Writ of Certiorari.

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Respondents NEVEL A. WALTERS AND MRS. DELPHIA WALTERS pray that this Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit, where Petitioner seeks to review a decision entered by the United States Court of Appeals for the Fifth Circuit on January 12, 1981.

OPINIONS BELOW

These consolidated cases, being suits for personal injuries and damages sustained as a result of injuries sustained in an oil field

accident, were tried, by agreement, before United States District Judge Walter L. Nixon, Jr., in the United States District Court for the Southern District of Mississippi, without a jury.

The District Judge found that Inexco had the duty to exercise reasonable care to provide a reasonably safe place for Walters to work, and that this duty involved providing reasonable and adequate safety devices on the rig, and to properly install and test them when it was safe to do so (Pet. App. p. 24a). The District Court further found that Inexco had the duty to install and test the kill line and to see that it was operational prior to the commencement of drilling, and that the kill line was an essential safety feature of a drilling rig (Pet. App. p. 24a). The Court found from the evidence and its assessment of the credibility of the witnesses that the kill line was never attached to the blowout prevention system before or after drilling was started, and that the failure of Inexco to discharge this duty constituted negligence, and that this negligence was the sole proximate cause of the plaintiff's injury (Pet. App. p. 24a). Judgments were entered thereon.

The cases were appealed to the Fifth Circuit Court of Appeals, and after oral argument, the cases were affirmed on the basis of the opinion of the trial judge.

JURISDICTION

Jurisdiction is attempted to be invoked under the right of the United States Supreme Court to review Orders and Actions of the District Court and Court of Appeals by Writ of Certiorari under Title 28, U.S.C., Section 1254(1), 2101(c) and (f).

CONSTITUTIONAL PROVISIONS, STATUTES, REGULATIONS AND ORDERS INVOLVED

Respondents respectfully submit that no Constitutional provisions are involved.

The Supreme Court under Rule 17 does not accept a review on a Writ of Certiorari except when there are special and important reasons therefor. In the cases at bar, there is no question of conflict between the Federal District Court or the Courts of Appeal with a decision of any other Federal Court, District, Court of Appeals, or the Mississippi Supreme Court. No federal question has been decided nor is there any federal decision in conflict with the District Court decision. The Federal Court of Appeals did not depart from the accepted usual course of judicial procedure nor is there any question of sanctioning such a departure by the Federal District Court. Lastly, there is no important question of federal law involved that needs settlement by this Court.

The issues involved in this case are questions of fact for determination by the trier of the facts and the decisions of law are questions of whether the facts in evidence are sufficient to justify the decision by the District Judge, as trier of the facts. There has been no issue raised as to any Constitutional question.

STATEMENT OF CASE

The consolidated cases at bar are damage suits brought under the statutes of the State of Mississippi, in the United States District Court for the Southern District of Mississippi, Hattiesburg Division, by Nevel A. Walters and his wife, Mrs. Delphia Walters, against Inexco Oil Company for personal injuries and damages, including loss of consortium by the wife.

The pleadings charge that Walters, an employee of Loffland Brothers Company, an independent contractor, was injured while in the course of his employment as a result of the negligence of Inexco Oil Company, the owner and operator, in failing to furnish Walters a safe place in which to perform his work.

The defendant, Inexco Oil Company, filed a third-party complaint against Loffland Brothers Company upon the basis of an indemnity provision in the contract between Loffland Brothers Company and Inexco Oil Company.

Issue was joined and by agreement of the parties, the matter was tried before the District judge, without a jury. After conclusion of the trial, the parties submitted proposed Findings of Fact and Conclusions of Law, and the District Court rendered its Memorandum Opinion finding that Inexco's failure to discharge its responsibility to see that the kill line was installed and tested on the subject drilling rig constituted negligence, which was the sole proximate cause of plaintiff's injury and returned verdicts in favor of the two plaintiffs against Inexco.

Inexco Oil Company was the operator of a well being drilled by contract with Loffland Brothers Company. Walters was a member of the drilling crew of Loffland Brothers Company, and had worked approximately two (2) weeks for Loffland.

On the date of the accident, drilling operations had progressed for some time and the casing work had been completed. There was ample evidence presented by lay witnesses, as well as expert witnesses, to the effect that in the drilling of an oil well, it is the responsibility of the operator (Inexco) to see that the casing program is done in a proper manner, which included the attachment of the blowout preventer and kill line and the proper testing by the operator (Inexco) to determine that the casing program is satisfactory. Even Inexco's representative and petroleum engineer, Boudreaux, testified that this was true, and admitted that if the kill line and preventers had been properly tested by Inexco that the explosion would not have occurred.

There was no evidence produced to show any negligence on the part of Loffland Brothers Company.

There was likewise ample evidence to support the awards in these cases, which is detailed in the Memorandum Opinion (Pet. App. 16a-27a).

Petitioner appealed, with supersedeas, said cases to the Fifth Circuit Court of Appeals, and after oral argument, the Fifth Circuit affirmed the cases on the basis of the Memorandum Opinion.

Petitioner thereafter filed two (2) petitions for Rehearing and Petitions for Rehearing En Banc, which were denied, pursuant to the Federal Rules.

ARGUMENT

REASONS FOR DENYING THE WRIT

I.

There Is No Factual Basis For The Contention Of The Petitioner That Inexco Could Not Be Guilty Of Negligence Because There Was A Contract For Drilling The Oil Well By Loffland Brothers

Petitioner dwells a great deal over the fact that the Trial Court did not believe the testimony of Riley Dial. However, petitioner overlooks the fact that there were two co-employees of Walters, as well as Walters, who testified that the kill line had never been installed or tested. Likewise, the petitioner fails to consider the fact that Inexco furnished its drilling reports, which were prepared by Dial, and that the drilling reports failed to reflect the installation or testing of the kill line.

Montgomery, the expert of respondents, and Boudreaux, an officer of Inexco and petroleum engineer, testified that it was the responsibility of Inexco to supervise the casing program and to see that the kill line was installed and tested before authorizing drilling out of the casing.

Petitioner contends that the place was perfectly safe until it was made unsafe by an employee of Loffland Brothers, but in truth and fact, the place had never been safe from the moment that Inexco authorized Loffland to drill out of the casing.

Inexco had company representatives on the site from time to time, and Inexco created the unsafe place to work and permitted said unsafe condition to continue to exist until the accident and explosion, which resulted in the severe injuries to Walters.

The petitioner asserts that the contract between Inexco and Loffland completely relieved Inexco of all responsibility at the well site during the drilling operations, but a careful reading of the contract reveals that each party, the contractor and the

operator, retained certain responsibilities. Expert testimony as to the custom and practice in the oil field industry as to the respective responsibility of the contractor and the operator during drilling operations was presented as a further aid to the Trial Court.

Certainly, the contract contained an indemnification provision whereby the Contractor agrees to indemnify the operator of all claims arising out of injuries, etc., resulting from the *willful or negligent acts or omissions of contractor* and/or contractor's agents, employees, representatives, or sub-contractors, but these consolidated cases fail to reveal any negligent acts on the part of the contractor, Loffland.

Respondents submit that the findings of the trial Court contain an accurate description of the duties and responsibilities of the operator and contractor, and there was a failure on the part of Inexco to furnish Walters a safe place to work in that Inexco had the responsibility of installing, testing and inspecting the blowout preventers and related safety equipment, including the kill line, and that this should have been done before Inexco authorized Loffland to drill through the cement plus and out of the surface casing, which was the only safe time to perform this testing (Pet. App. 11a-12a; Pet. App. 24a).

Petitioner contends that the case of *Mississippi Power Co.* v. *Brooks,* (Miss. 1975), 309 So.2d 863, supports the theory that they seek in the cases at bar. But respondents respectfully disagree with this contention. The *Mississippi Power Co.* v. *Brooks* case, *supra,* is a case wherein Mississippi Power Company had contracted with Foster Wheeler Corporation to design and construct a boiler to be used in its generating unit. The boiler was to be built within the structural steel framework previously erected by Mississippi Power Company. The contract provided that Foster Wheeler Corporation agreed to design, construct and install a boiler with full and complete control over the mode and method of the work. Such is not the cir-

cumstances in these cases in that the contracts specifically provided that Inexco as the operator retained certain responsibilities, which included the responsibility for the casing program which involved the installation and testing of the kill line, which is the subject of this lawsuit.

The *Mississippi Power Co.* v. *Brooks* case, *supra,* affirms the statements set forth in *Ingalls Shipbuilding Corp.* v. *McDougald,* (Miss. 1969), 228 So.2d 365, and its enunciation of the law in cases involving prime contractor and an independent contractor to the effect that *one who employs an independent contractor is nevertheless answerable for its own negligence.* In the *Mississippi Power Co.* v. *Brooks* case, *supra,* the evidence shows that Mississippi Power Company exercised absolutely no control over the work, that the place where Brooks was killed was created and brought into existence by Foster Wheeler Corporation.

In the cases at bar, the operator, Inexco, retained certain responsibilities under the contract and the failure to discharge these responsibilities created and brought into existence the unsafe conditions at the well site which ultimately resulted in the severe injuries to the plaintiffs herein.

It is submitted that the District Court was imminently correct in its findings of fact and in holding Inexco answerable for its own negligence, under the authority of *Ingalls Shipbuilding Corp.* v. *McDougald, supra,* and *Miles* v. *Vicksburg Chemical Co.* (1979 5th Cir.) 588 F.2d 512.

II.

There Exist No Conflicts Of Decisions Among The United States Court Of Appeals, No Conflicts Contrary To The Decisions Of The Supreme Court Of The State Of Mississippi, No Improper Interpretation Of Law, Nor Does Any Other Reason Exist For Granting The Petition For Writ Of Certiorari.

Petitioner contends that the decision in the cases at bar conflicts with other decisions in the Fifth Circuit, and Petitioner cites the cases of *Crosby* v. *General Tire & Rubber Co.* (5th Cir. 1976), 543 F.2d 1128, and *Ramsey* v. *Georgia-Pacific Corp.*, (5th Cir. 1979), 597 F.2d 89, as being cases where the Court reached different conclusions on the same facts in interpretions of a contract.

It is most respectfully submitted that no conflict exists between the findings in the cases at bar, which were affirmed by the Fifth Circuit Court of Appeals, and the decisions reached in the *Crosby* case, *supra,* and the *Ramsey* case, *supra.*

The *Ramsey* case, *supra,* and the *Crosby* case, *supra,* both involved cases wherein there were questions of negligence on the part of the contractor, and in the cases at bar, the findings of the Trial Court clearly reflect that the sole and only negligence involved was the negligence of Inexco.

The *Ramsey* case, *supra,* involved a case brought by an employee of Walker, the independent contractor, against Georgia-Pacific, the principal. The principal brought third-party complaint against the contractor for indemnification. The District judge granted summary judgment dismissing the third-party complaint, and principal appealed. Facts of the case are quite different from the cases at bar, in that a full hearing had not been had in the matter. Therefore, only the pleadings were before the Fifth Circuit, and in interpreting the contract and the law of the State of Mississippi, the Fifth Circuit concluded that Georgia-Pacific, principal, had no cause of action under the indemnity agreement for any loss due *solely to its own negligence,* and that Georgia-Pacific would not be liable to the plaintiff for any damages absent some negligence on its part. Respondents respectfully submit that the *Ramsey* v. *Georgia-Pacific* case, *supra,* in no way supports the contention of Petitioner, but, in fact, reaffirms respondents' contention that, after a full hearing in the cases at bar, Inexco should be solely responsible for its own negligence.

The *Crosby* v. *General Tire* case, *supra,* is a case wherein the negligent party sought to recover under a written indemnity agreement, and the Fifth Circuit held that such contract was void because it purported to relieve the indemnitee of liability for its own negligence.

Respondents respectfully submit that the cases at bar, at the very beginning, were cases against Inexco seeking damages as the result of Inexco's negligence. Throughout the trial, this was the principle on which the evidence was presented, and respondents respectfully submit that respondents met the burden of proof and that the Memorandum Opinion (Pet. App. p. la-32a), accurately details the evidence presented, and the findings of fact and conclusions of law as reached by the trial judge, as the trier of these consolidated cases, which were affirmed by the Fifth Circuit, are imminently correct.

Respondents respectfully submit that there is no conflict of decisions of another court of appeals, nor of the Fifth Circuit, nor of the Mississippi Supreme Court on the same matter, and that these consolidated cases do not involve any important state or territorial questions, or conflicts, nor does it involve any important questions of federal law which has not been decided, and consequently, respondents respectfully submit that no basis exists for the granting of a Petition for Writ of Certiorari.

Consequently, respondents respectfully submit that the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit should be denied.

CONCLUSION

Respondents, Nevel A. Walters and wife, Mrs. Delphia Walters, humbly submit that Inexco Oil Company received a fair and impartial trial lasting a period of three days, and received a fair and impartial review of said matter by the Fifth Circuit Court of Appeals, and therefore, have received constitutional due process and equal protection of the law. Therefore, the respondents respectfully request this Honorable Court to deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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CERTIFICATE

Three true copies of the foregoing Brief of Respondents Nevel A. Walters and Mrs. Delphia Walters in Opposition to Petition for Writ of Certiorari To the United States Court of Appeals for The Fifth Circuit have been mailed postage prepaid, to Honorable M. M. Roberts, Attorney for the Petitioner Inexco Oil Company, Post Office Box 870, Hattiesburg, Mississippi, 39401, and to Honorable Dorrance Aultman, Attorney for Respondent Loffland Brothers Company, Post Office Box 750, Hattiesburg, Mississippi, 39401, on this, the 26th day of February, A.D., 1981.

LEONARD B. MELVIN, JR.,

Attorney for the Respondents
Nevel A. Walters and Mrs.
Delphia Walters